UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WEN CHIANG Plaintiff, v. VERIZON NEW ENGLAND INC. and VERIZON MASSACHUSETTS, Defendants.	)	CIVIL ACTION NO. 06-cv-12144-DPW

MEMORANDUM AND ORDER
January 13, 2009

Plaintiff Wen Chiang brings this complaint against defendant Verizon New England Inc. ("Verizon NE")[1] for violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*, and the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 *et seq*. Chiang claims that Verizon NE engaged in illegal debt collection practices in connection with his unpaid telephone service bills and failed to conduct a reasonable investigation of his disputes about the debts Verizon NE reported to several credit reporting agencies. Verizon NE has moved for summary judgment on grounds that: (1) it is not a "debt collector" for purposes of the FDCPA, and (2) there is no admissible evidence that its investigation was unreasonable under the FCRA or that the negative information on Chiang's credit reports was in fact

[1] Chiang also names "Verizon Massachusetts" as a defendant. Verizon NE has asserted that "Verizon Massachusetts" does not exist as a separate legal entity. Although Chiang expresses skepticism as to the accuracy of this contention in his summary judgment opposition brief, he has offered no evidence to the contrary. I therefore treat Verizon NE as the sole defendant for purposes of this motion.

inaccurate. For the reasons discussed below, I will grant summary judgment as to both claims.

I. FACTUAL BACKGROUND

A. The Parties

Defendant Verizon NE is a telecommunications company that does business in Massachusetts. Wen Chiang is the President of Thomas & Brothers Construction and Trading, Inc., a residential construction and painting business. According to Chiang, the company also conducts international trade.

B. Plaintiff's Telephone Service

From 2005-2007, Chiang had numerous disputes with Verizon NE concerning his telephone service. Chiang claims that from July 2005 through February 2006, Verizon NE overcharged him for a long distance service he had not ordered. According to Chiang, he discussed the overcharges with a Verizon NE customer service representative in November 2005, but nothing was done to correct the situation. In February 2006, Chiang temporarily switched to another service provider, but he claims Verizon NE continued to charge him. Chiang sent two demand letters to Verizon NE, disputing these charges and requesting an adjustment of his bill.

In July 2006, Chiang switched his telephone service back to Verizon NE. He claims, however, that the service was not successfully installed until eight days after the date he had scheduled for installation. Later that month, Chiang filed a lawsuit against Verizon NE in Massachusetts state court for damages arising from the failure to install his telephone service in a timely manner.

Chiang also alleges that from July 2006 through December 2006, Verizon NE charged him for long distance services he did not order, service on a telephone number he never had, and overseas calls he did not make. According to Chiang, in August 2006 he again contacted Verizon NE's customer service department and was again told that his bills would be corrected, but nothing was done.[2] In September 2006, another customer service representative told Chiang that despite his disputes about the charges, his service would be shut off if he did not pay his current bill. Chiang then attempted to pay his balance by credit card over the phone, but his next bill showed no payment had been made. Chiang subsequently wrote a letter to Verizon NE's attorney, complaining about this incident and indicating that he would file another lawsuit if the situation was not resolved.

In late 2006, believing he had been improperly overcharged and did not owe Verizon NE any additional money,[3] Chiang did not pay the amount due on several of his bills. As a result, in December 2006, Verizon NE suspended Chiang's telephone service. In January 2007, Chiang's lawyer contacted Verizon NE, and Chiang's service was restored on a limited basis, for regional calls and emergency calls only.[4] Later that month, Chiang once again switched to another service provider, and in February 2007, he filed a lawsuit against Verizon NE in Massachusetts Superior Court for damages arising from the suspension of his phone service.[5]

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[2] Chiang also claims that in August 2006 he cancelled all long distance service with Verizon NE and began using prepaid calling cards. It is not clear how this claim is consistent with Chiang's contention that when Verizon NE suspended his telephone service in December 2006, that service still included "long distance and service to Canada and overseas."

[3] In fact, Chiang contends that by October 2006, Verizon owed him a "credit" for the overcharges he had already paid.

C. Debt Collection and Credit Reporting

Beginning in late 2006, Chiang received letters and phone calls from debt collection agencies seeking to collect on Verizon NE's unpaid bills. These communications indicated that Chiang's two accounts with Verizon NE were delinquent in the amounts of $119.20 and $100 respectively.[6] Chiang alleges that some of the calls from debt collectors included abusive and profane language. The letters identified Chiang's creditor by a variety of names, including "Verizon," "Verizon New England, Inc.," "Verizon - North," and "Verizon N Mass FR." Chiang claims that some debt collectors' telephone calls also identified his creditor as "Verizon Massachusetts." Chiang did not, however, receive any debt collection communications from an entity actually purporting to be "Verizon" or "Verizon Massachusetts."

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[4] According to Chiang, although he resided in a town with a 781 area code, Verizon NE restored his regional phone service only for the 617 area code.

[5] Chiang's two Massachusetts state court lawsuits - for the failure to timely install his service in July 2006 and the suspension of his service in December 2006 - were resolved on summary judgment. After Verizon NE indicated a willingness to compensate Chiang in accordance with the terms of the Massachusetts telecommunication tariffs, the state court judge held that the tariffs controlled and limited Chiang's damages in connection with both cases. Chiang has expressed an intention to appeal this decision.

[6] Several letters Chiang received from debt collectors listed different amounts due. In September 2006, a letter listed his debt on one account as $217.20, although later letters for

In addition, Chiang received communications from credit reporting agencies,[7] indicating that he had delinquent accounts with Verizon NE in the amounts of $119.20 and $100. These communications also identified Chiang's creditor by different names. A Trans Union credit report listed Chiang's creditor as "Verizon NW E," located in Columbus, Ohio. An Experian credit report listed his creditor as "Verizon New England Inc.," with no address provided. The credit report from Equifax likewise listed

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that account listed it as $119.20. In April and June 2007, two letters listed his debt on his other account as $431.60, rather than $100. Chiang also received a debt collection letter indicating he owed $212.71 for services on a telephone number he claims he never had.

[7] Under 15 U.S.C. § 1681a(f), a "consumer reporting agency" is defined, in pertinent part, as an entity that "engages in . . . the practice of assembling or evaluating consumer credit information . . . for the purpose of furnishing consumer reports to third parties . . . ." The terms "credit reporting agency" and "consumer reporting agency" are used interchangeably. *See, e.g.*, *DeAndrade v. Trans Union LLC*, 523 F.3d 61, 65-66 (1st Cir. 2008). For the sake of consistency with the parties, I will use the term "credit reporting agency."

Chiang’s creditor as “Verizon New England,” but a separate letter from Equifax identified it as “Verizon Massachusetts, Inc.” Both documents from Equifax indicated the creditor’s address was “236 E. Town St., Columbus, OH.” After receiving these notices, Chiang sent several demand letters to the credit reporting agencies, notifying them of his lawsuit against Verizon NE, and requesting that the negative information be either removed from his credit reports or identified in the reports as “disputed.”

D. Verizon NE’s Investigation of Chiang’s Disputes

Verizon NE contracts with Credit Bureau Collection Services, Inc. (“CBCS”) - an Ohio corporation located at 236 E. Town Street, Columbus, Ohio - to perform all consumer credit reporting services. These duties include providing delinquent account information to credit reporting agencies and responding to reports of consumer disputes from those agencies. The address of CBCS is provided by Verizon NE to consumers and credit reporting agencies under the name “Verizon” to ensure that disputes concerning Verizon NE accounts will reach CBCS in a timely manner. The activities of CBCS are monitored by personnel from Verizon Services Corp., a corporate affiliate of Verizon NE.

The credit reporting agencies that received Chiang’s demand letters notified CBCS of his disputes through an online reporting system. This system organizes all credit dispute reports into an automated queue, organized by the date the responses are due under FCRA requirements. Each report contains information concerning the consumer, the consumer’s account, and the nature of the dispute. According to the computer files relating to Chiang’s accounts, his disputes were described alternatively as: “claims inaccurate information,” “claims paid the original creditor before collection status,” “claims that this account was never paid late,” and “disputes the balance of this account and states account is in federal lawsuit.”

CBCS personnel have access to Verizon NE’s account and billing records in order to review dispute reports and determine the accuracy of the information contested by the consumer. Verizon employees are available to assist CBCS personnel with investigations if the information in these records is insufficient to resolve the dispute. CBCS personnel investigated Chiang’s complaints and verified that, according to Verizon NE’s records, the negative information in Chiang’s credit reports was accurate. There is no record that CBCS ever separately contacted Verizon NE in connection with this investigation.

Following the investigation, CBCS responded to the credit reporting agencies to verify the negative information in Chiang’s credit reports. According to Chiang, the credit reporting agencies thereafter sent him letters indicating that his disputes had been investigated and that no changes would be made to his credit reports.[8]

E. Plaintiff’s Alleged Damages

Chiang claims to have suffered substantial monetary damages as a result of Verizon NE’s reports of negative credit information. According to Chiang, in November and December 2006, he signed five preliminary contracts on behalf of Thomas & Brothers Construction and Trading, Inc. Chiang claims he agreed to ship 860,000 metric tons of used steel to buyers in Taiwan for a total value of more than $200 million. Chiang was required to deliver the first shipment of steel within 180 days after the contracts were signed.

In order to cover the cost of completing these transactions, Chiang needed to obtain $500,000 in loans. Chiang applied for loans with several banks and also spoke personally with an international banker. According to Chiang, each loan application was denied as a direct result of his negative credit history from his delinquent accounts with Verizon NE.[9] Although Chiang acknowledges that he has had other negative marks in his credit history, several of which have prompted federal lawsuits, he contends that every delinquency except for Verizon NE's had been deleted by the time he sought the loans.

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[8] Verizon NE’s objection to the admissibility of these letters is addressed in Section III, *infra*.

[9] The letters Chiang received from these banks indicate that among the other reasons for denying the loan applications were: “excessive dept store/bank card balances at or near credit limit,” “high level of open end and/or unsecured credit

Chiang claims he would have received a sizable personal profit from his commission on the steel contracts, but he has been unable to clarify the precise amount. In his initial disclosures for this litigation, Chiang computed his personal damages to be $27.5 million. In the Second Amended Complaint, Chiang purported to seek $500,000 in damages. In his response to Verizon NE's First Set of Interrogatories, he claimed to have lost $80 million in profits. Later, at his deposition testimony, he testified his commission on the deals would have been $8 million.[10]

II. SUMMARY JUDGMENT STANDARD

A court must grant summary judgment where there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). A "genuine" factual issue is one that "may reasonably be resolved

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balances," and "proportion of balance to high credit [limits] on . . . revolving accounts."

[10] In Chiang's response to Verizon NE's statement of facts, he characterizes $8 million as his personal earnings on one contract. In his deposition testimony, however, Chiang appears to indicate $8 million would have been his total profit for all of the international steel trading deals.

in favor of either party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). A fact is "material" when "it carries with it the potential to affect the outcome of the suit under the applicable law." *DeAndrade v. Trans Union LLC*, 523 F.3d 61, 65 (1st Cir. 2008) (quoting *Sanchez v. Alvarado*, 101 F.3d 223, 227 (1st Cir. 1996)).

In making its summary judgment inquiry, the court "must view the entire record in the light most hospitable to the party opposing summary judgment, indulging all reasonable inferences in that party's favor." *Griggs-Ryan v. Smith*, 904 F.2d 112, 115 (1st Cir. 1990). However, summary judgment is appropriate against a nonmoving party "who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). For the nonmoving party, "[c]onclusory allegations, improbable inferences, and unsupported speculation, are insufficient to establish a genuine dispute of fact." *Triangle Trading Co. v. Robroy Indus., Inc.*, 200 F.3d 1, 2 (1st Cir. 1999) (internal quotations and citations omitted).

III. EVIDENTIARY DISPUTES

In order to determine precisely which materials are properly before me, I must first address evidentiary objections. For documents to be considered on a summary judgment motion, they must be authenticated by and attached to an affidavit that meets the requirements of Federal Rule of Civil Procedure 56(e). *See Carmona v. Toledo*, 215 F.3d 124, 131 (1st Cir. 2000). These affidavits "must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated." Fed. R. Civ. P. 56(e)(1). Inadmissible evidence may not be considered. *See Horta v. Sullivan*, 4 F.3d 2, 8 (1st Cir. 1993). The parties have salted their respective summary judgment briefs with what may be viewed as admissibility objections.[11]

Chiang objects to the Affidavit of Carole D. Bickerdyke on grounds that Bickerdyke could not have personal knowledge of the facts therein. In her affidavit, Bickerdyke describes many features of Verizon NE's business practices. She asserts, for example that Verizon NE has made filings with the Department of Telecommunications and Cable under the name "Verizon Massachusetts," and that Verizon NE has outsourced all of its debt collection efforts - including those related to Chiang's accounts - to third-party debt collectors. Although Bickerdyke asserts that she "ha[s] personal knowledge of the facts set forth herein," she provides no basis for this knowledge other than that

[11] Although many of the exhibits submitted in connection with the parties' respective summary judgment briefs have not been not authenticated pursuant to Rule 56(e), I address only specific objections raised by the parties.

she is “employed by” Verizon Communications Inc., the parent company of Verizon NE. The mere fact of employment is an insufficient basis to establish that Bickerdyke would be competent to testify to these matters at trial. *Cf. Livick v. The Gillette Co.*, 524 F.3d 24, 28 (1st Cir. 2008) (affirming a district court’s holding that a human resources manager in one city lacked sufficient personal knowledge to describe, in a summary judgment affidavit, employment policies at the same company’s office in another city). Consequently, I sustain Chiang’s objections and will not consider the contents of Bickerdyke’s affidavit for purposes of this motion.

For its part, Verizon NE objects that two sets of letters produced by Chiang are inadmissible as hearsay: first, letters from credit reporting agencies to Chiang, describing the results of the investigation of his disputes; second, letters from financial institutions to Chiang regarding the basis for their denials of his loan applications. Because these letters are produced without any authenticating affidavits and are offered to prove the truth of their contents, I sustain the objection and hold them inadmissible. *See* 10A Charles Alan Wright, Arthur Miller and Mary Kay Kane, *Federal Practice and Procedure* § 2722 (3d ed. 2008) (“[A] letter submitted for consideration under Rule 56(e) must be attached to an affidavit and authenticated by its author in the affidavit or a deposition.”). I similarly sustain Verizon NE’s objection to Chiang’s hearsay testimony that a banker personally told him his loan was denied based on Verizon NE's negative credit reports.

In its summary judgment brief, Verizon NE also makes the broad claim that there is "no admissible evidence" that any credit reporting agency reported Chiang's disputes to Verizon NE. This is contradicted by the affidavit of Verizon specialist Chanda Bishop and its accompanying materials, which show that CBCS - acting as Verizon NE's agent - not only received notification of Chiang's disputes, but also investigated them and reported the results back to the credit reporting agencies. At the hearing in this matter, counsel for Verizon NE acknowledged that this evidence was properly before the court.

IV. DISCUSSION

A. Fair Debt Collection Practices Act

1. Legal standard

The FDCPA, 15 U.S.C. § 1692 *et seq.*, was enacted in large part "to eliminate abusive debt collection practices by debt collectors" against consumers. 15 U.S.C. § 1692(e). The FDCPA defines a "debt collector" as "any person . . . in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another." 15 U.S.C. § 1692a(6). As a general rule, the FDCPA does not apply to creditors who are collecting on their own accounts. *See Pollice v. Nat'l Tax Funding, L.P.*, 225 F.3d 379, 403 (3d Cir. 2000); *see also Transamerica Fin. Servs., Inc. v. Sykes*, 171 F.3d 553, 554 n.1 (7th Cir. 1999). Nor is a creditor vicariously liable under the FDCPA for the efforts of a debt collector to collect on that creditor's debts. *See Wadlington v. Credit Acceptance Corp.*, 76 F.3d 103, 108 (6th Cir. 1996) (declining to impose vicarious liability on non-debt collectors for the actions of their attorney, who was a "debt collector" under the FDCPA).

Chiang alleges that Verizon NE violated several provisions of the FDCPA by: (1) engaging in "conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt," 15 U.S.C. § 1692d; (2) making "false, deceptive, or misleading representation[s] . . . in connection with the collection of [a] debt," 15 U.S.C. § 1692e; and (3) failing to send the required letter of notice with specific information regarding the consumer's rights to dispute the debt, 15 U.S.C. § 1692g(a). I find that Chiang's claim fails as a matter of law because Verizon NE is not a "debt collector" within the meaning of the FDCPA.

2. Verizon NE as a "debt collector"

Chiang argues that Verizon NE falls within an exception whereby a creditor who affirmatively poses as a debt collector will itself be considered a "debt collector" for purposes of the

FDCPA. *See, e.g., Maguire v. Citicorp Retail Servs., Inc.*, 147 F.3d 232, 235 (2d Cir. 1998). In order for this exception to apply, the creditor must (1) be in the process of collecting its own debts, and (2) use a name other than its own which would indicate that a third party is attempting to collect the debts. *See* 15 U.S.C. § 1692a(6). The purpose of the exception is to discourage “flat-rating,” a practice by which creditors purchase letters from third party collection agencies that bear the collection agency’s letterhead, then use them to pressure the debtor to pay at once. *See Gutierrez v. AT&T Broadband, LLC*, 382 F.3d 725, 738 (7th Cir. 2004); *cf. Orenbuch v N. Shore Health Sys., Inc.*, 250 F. Supp. 2d 145, 150 (E.D.N.Y. 2003) (describing “flat-rating” in the context of 15 U.S.C. § 1692j). A debtor receiving such a letter may be intimidated or instilled with a sense of urgency based on the false impression that he is being pursued by a professional third party debt collection agency. *See Orenbuch*, 250 F. Supp. 2d at 150.

According to Chiang, Verizon NE falls within this exception because it attempted to collect its own debts under the name “Verizon Massachusetts.” Chiang claims he was confused when he received communications identifying his creditor as “Verizon Massachusetts.” He further asserts that he understood “Verizon Massachusetts” to be a separate corporation in Ohio that was attempting to collect the debts of Verizon NE.[12]

I find the exception inapplicable. First, Chiang has presented no evidence that any of the alleged FDCPA violations occurred while Verizon NE was attempting to collect its own debts from him. His claims stem from letters and calls he received from third party collection agencies, some of whom identified his creditor, but not themselves, as “Verizon Massachusetts.” As Chiang acknowledges, there is no evidence that he ever received any debt collection communications from an entity purporting actually to be “Verizon” or “Verizon Massachusetts.” Chiang simply asserts in his summary judgment opposition brief that Verizon was “obviously attempting to collect its own alleged debts” from him, and he further surmises that the debt collectors would not have used the name “Verizon Massachusetts” unless it was at the behest of Verizon. A nonmoving party may not, however, create a genuine issue of fact on summary judgment with “[c]onclusory allegations” or “unsupported speculation.” *Triangle Trading Co.*, 200 F.3d at 2.

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[12] Verizon NE claims that Chiang later contradicted these assertions in his deposition testimony, when he appeared to acknowledge that he was aware “Verizon Massachusetts” was the same company that provided his telephone service. Although this may be the most natural reading of Chiang’s testimony, I do not agree with Verizon NE that “Chiang admitted unambiguously that he did not believe ‘Verizon Massachusetts Inc.’ was a debt collector.” Regardless, because FDCPA violations are evaluated under an objective standard, any dispute about Chiang’s subjective confusion does not affect the resolution of this motion.

Second, even if Verizon NE had been collecting its own debts under the name “Verizon Massachusetts,” that name would not indicate that a third party was collecting Verizon NE’s debts. A creditor need not use its full business name or its name of incorporation to avoid FDCPA coverage. See *Maguire*, 147 F.3d at 235. Rather, it may use a name under which it usually transacts business, a commonly-used acronym, or any name that it has used from the inception of the credit relationship. *See id.* Whether a creditor’s use of a name violates the FDCPA is determined by “whether a least sophisticated consumer would have the false impression that a third party was collecting the debt.” *Id.* at 236. Although the “least sophisticated consumer” standard is a low one, “it prevents liability for bizarre or idiosyncratic interpretations of collection notices by preserving a quotient of reasonableness and presuming a basic level of understanding and willingness to read with care.” *Rosenau v. Unifund Corp*., 539 F.3d 218, 221 (3d Cir. 2008) (internal quotations and citations omitted).

Under this standard, I find that Verizon NE’s use of the name “Verizon Massachusetts” does not violate the FDCPA. Verizon NE used the name “Verizon Massachusetts” on every one of its telephone bills to Chiang to describe its Massachusetts services - albeit in the margins of each bill’s third page.[13]

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[13] There is also at least some evidence that Verizon NE regularly uses the name “Verizon Massachusetts” to describe its

Furthermore, Chiang's bills clearly and repeatedly identified his service provider as "Verizon." A least sophisticated consumer, exercising even a modicum of reasonableness, would not conclude that "Verizon Massachusetts" was a third party debt collection agency completely unrelated to "Verizon" or "Verizon New England, Inc." *Cf. Young v. Lehigh Corp.*, No. 80-C-4376, 1989 WL 117960, *22 (N.D. Ill. Sept. 28, 1989) ("How the plaintiff (or anyone else, for that matter) could have been duped into believing that Lehigh Corporation was not affiliated with Lehigh Country Club, Inc. is a mystery."). Even if a consumer were to believe from reading the bills that "Verizon Massachusetts" was a separate corporate affiliate or subsidiary of "Verizon" or "Verizon New England, Inc.," there would be no FDCPA violation, because an entity collecting for the accounts of a corporate affiliate is not a "debt collector" under the statute. *See* 15 U.S.C. § 1692a(6)(B). For these reasons, I will grant summary judgment with respect to Chiang's FDCPA claim.

B. Fair Credit Reporting Act

1. Legal standard

The primary purpose of the FCRA, 15 U.S.C. § 1681 *et seq.*, is to "ensure fair and accurate credit reporting, promote

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telephone services in Massachusetts. *See, e.g., Boston Edison Co. v. Town of Bedford*, 831 N.E.2d 882, 882 n.2 (Mass. 2005) (identifying the plaintiff as "Verizon New England, Inc., doing business as Verizon Massachusetts.")

efficiency in the banking system, and protect consumer privacy." *Safeco Ins. Co. of Am. v. Burr*, 127 S. Ct. 2201, 2205 (2007). To this end, the act imposes requirements on three types of entities: users of consumer reports, credit reporting agencies, and furnishers of information to credit reporting agencies. *See Leet v. Cellco P'ship*, 480 F. Supp. 2d 422, 428 (D. Mass. 2007). It is uncontested in this case that Verizon NE is a "furnisher of information" for purposes of the statute.[14]

The FCRA imposes two types of requirements on "furnishers of information." First, under § 1681s-2(a), a furnisher must provide accurate information to credit reporting agencies. 15 U.S.C. § 1681s-2(a). The FCRA expressly limits enforcement of this provision to state and federal officials - *see* 15 U.S.C. §§ 1681s-2(c)(1), 2(d) - and courts have consistently held that there is no private cause of action against furnishers for violations of this duty. *See, e.g., Gibbs v. SLM Corp.*, 336 F. Supp. 2d 1, 11 (D. Mass. 2004), *aff'd,* 2005 WL 5493113 (1st Cir.

[14] All credit reporting services involving Verizon NE's customer accounts, including Chiang's account, were conducted by CBCS. At the hearing in this matter, counsel for Verizon NE acknowledged that under the principles of agency law, Verizon NE would be liable for any failure of CBCS to comply with FCRA requirements while acting within the scope of its contractual duties to Verizon NE. *See* Restatement (Third) Agency § 2.04 (2006); *cf*. *Jones v. Federated Fin. Reserve Corp.*, 144 F.3d 961, 964-66 (6th Cir. 1998) (relying on the Restatement for principles of agency law in the context of the FCRA); *Marshall v. Gravitt*, 2:06-CV-0536-RCJ-GWF, 2007 WL 1792416 *4 (D. Nev. June 18, 2007) ("When agency principles are applied to the FCRA, federal courts favor application of the general common law of agency . . . .").

Aug. 23, 2005). Second, under § 1681s-2(b), a furnisher must investigate the validity of a consumer's dispute regarding the accuracy of information the furnisher provided to credit reporting agencies. 15 U.S.C. § 1681s-2(b). The majority of courts to consider the issue have concluded that there is a private cause of action under this provision. *See Gibbs*, 336 F. Supp. 2d at 12; *see also Gordon v. Greenpoint Credit*, 266 F. Supp. 2d 1007, 1010 (S.D. Iowa 2003) (collecting cases). Because the FCRA generally imposes civil liability on any person who willfully or negligently fails to comply with its requirements - *see* 15 U.S.C. §§ 1681n, o - and there is no express exclusion limiting enforcement of § 1681s-2(b) to government officials, I agree with those courts that have found a furnisher's failure to investigate gives rise to a private cause of action.

A furnisher's duty to investigate is triggered upon receiving notice of a consumer's dispute from a credit reporting agency. *See Young v. Equifax Credit Info. Servs. Inc.*, 294 F.3d 631, 639 (5th Cir. 2002); *Gibbs*, 336 F. Supp. 2d at 12. Upon receipt of such notice, a furnisher must:

> (A) conduct an investigation with respect to the disputed information;
> (B) review all relevant information provided by the consumer reporting agency . . .
> (C) report the results of the investigation to the consumer reporting agency;
> (D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person

> furnished the information . . . [and] (E) if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after an reinvestigation . . . promptly – (I) modify that item of information; (ii) delete that item of information; or (iii) permanently block the reporting of that item of information.

15 U.S.C. § 1681s-2(b)(1). Although the FCRA does not specify the level of investigation a furnisher must undertake to satisfy this provision, and the First Circuit has not addressed the issue, other courts have evaluated FCRA compliance under a reasonableness standard. *See Westra v. Credit Control of Pinellas*, 409 F.3d 825, 827 (7th Cir. 2005); *Johnson v. MBNA Am. Bank, NA*, 357 F.3d 426, 430 n.2 (4th Cir. 2004) (collecting cases). I agree with the conclusion of the Fourth Circuit that "the plain meaning of 'investigation' clearly requires some degree of careful inquiry by creditors." *Johnson*, 357 F.3d at 430. Whether a furnisher's investigation is "reasonable" is a factual question normally reserved for trial. *See Westra*, 409 F.3d at 827; *see also Gorman v. Wolpoff & Abramson, LLP*, 435 F. Supp. 2d 1004, 1009 (N.D. Cal. 2006). Summary judgment may, however, be appropriate if the reasonableness of the furnisher's procedures is beyond question. *See Westra*, 409 F.3d at 827.

2. Reasonableness of Verizon NE's investigation

Chiang claims Verizon NE violated § 1681s-2(b) by failing to conduct a reasonable investigation after being notified of his disputes by credit reporting agencies.[15] There is very little information in the record pertaining to the investigation of Chiang's disputes. The computer records produced by Chanda Bishop - a Verizon specialist who works as a liaison with CBCS - show only that CBCS personnel matched the negative information from Chiang's credit reports against the information in Verizon's account and billing records. Upon concluding that this information was consistent, CBCS confirmed to the credit reporting agencies that Chiang's credit reports were accurate. There is no indication that CBCS personnel ever contacted Verizon NE for additional assistance or information regarding Chiang's accounts.

I find that there is a genuine issue of material fact as to whether CBCS's investigation was reasonable under the circumstances. When a furnisher has only general information regarding the nature of a consumer's dispute, a relatively simple

[15] Chiang also makes several other claims under the FCRA that do not require extended analysis. In his Second Amended Complaint, Chiang alleges that Verizon NE violated the FCRA by failing to send a notification letter under § 1692g and by using the trade name "Verizon Massachusetts" in communications with credit reporting agencies. There is no provision in the FCRA that relates to either of these claims, and both issues were more properly addressed under the FDCPA in section IV.A, *supra*.

Chiang also claims in his summary judgment opposition brief that Verizon NE violated 15 U.S.C. § 1681s-2(a)(3) by failing affirmatively to inform credit reporting agencies that Chiang had disputed the negative credit information related to his accounts. As discussed above, however, there is no private cause of action for violations of § 1681s-2(a).

investigation may be adequate under the FCRA.[16] *See Westra*, 409 F.3d at 827; *see also Whiting v. Harley-Davidson Fin. Servs.*, 534 F. Supp. 2d 823, 832 (N.D. Ill. 2008) (holding that the amount of information a credit furnisher receives about a dispute “determines how extensive an investigation must be to be considered reasonable”) (internal quotation omitted). In this case, it does not appear that the credit reporting agencies provided extensive detail to CBCS regarding Chiang’s disputes. The summary pages in the computer records variously describe Chiang’s complaints as: “claims inaccurate information,” “claims paid the original creditor before collection status,” “claims that this account was never paid late,” and “disputes the balance of this account and states account is in federal lawsuit.”

On the other hand, by merely verifying that Chiang’s credit reports matched the information already in Verizon’s account and billing records, CBCS significantly limited the scope of the type of errors it might uncover. For example, erroneous charges for services Chiang never ordered or telephone calls he did not make would not likely be identified. *Cf. Johnson*, 357 F.3d at 431 (holding that a reasonable jury could conclude a furnisher’s investigation was unreasonable where it did not extend beyond

[16] This may be especially true where the furnisher must conduct a large number of investigations on a regular basis. According to Chanda Bishop, CBCS receives an average of 1000 notices of dispute per day regarding Verizon customers.

computer billing records to underlying documents such as account applications). Furthermore, according to Chiang, he had described the precise nature of his disputes at length in telephone calls and demand letters to Verizon NE representatives. *See Watson v. Citi Corp.*, 2:07-cv-0777, 2008 WL 4186317, *10 (S.D. Ohio Sept. 5, 2008) (finding an issue of material fact as to reasonableness where a furnisher performed only a limited investigation despite receiving telephone calls and other notices that provided details of the consumer's complaints). From this evidence, a reasonable jury could conclude that CBCS, acting on behalf of Verizon NE, should have conducted a more searching inquiry of Chiang's disputes.

As will appear in the following section, however, I find that Chiang's FCRA claim nonetheless fails as a matter of law because Chiang has not presented any evidence a reasonable investigation *could have* uncovered to show his credit reports were inaccurate.

3. Requirement to show inaccuracy under § 1681s-2(b)

At least one federal district court has required the plaintiff in a § 1681s-2(b) action to identify affirmatively information that a furnisher of credit information *could have* uncovered through a reasonable investigation to cast doubt on the accuracy of the disputed credit report. *See Donovan v. Bank of Am.*, 574 F. Supp. 2d 192, 206-08 (D. Me. 2008). Although §

1681s-2(b) does not expressly impose any such limitation, Judge Hornby in *Donovan* found the requirement to be inherent in the statute. In reaching this conclusion, *Donovan* relied primarily on cases interpreting § 1681i(a), a provision of the FCRA that requires credit reporting agencies themselves to investigate consumer disputes.[17] *Id.* at 206. In *Cahlin v. General Motors Acceptance Corp.*, for example, the Eleventh Circuit held that the determinative issue under § 1681i(a) was "whether the credit reporting agency *could have* discovered an error in a particular report through a reasonable investigation." 936 F.2d 1151, 1160 (11th Cir. 1991) (emphasis added). *See also Batdorf v. Equifax*, 949 F. Supp. 777, 781 (D. Haw. 1996) ("[Credit reporting agency] cannot be liable for failing to adequately reinvestigate the debt because reinvestigation would have led to the same information having been reported."), *aff'd,* 1999 WL 278088 (9th Cir. Apr. 14, 1999); *Benson v. Trans Union, LLC*, 387 F. Supp. 2d 834, 844 (N.D. Ill. 2005) ("[B]ecause the extensive investigation undertaken for purposes of this lawsuit has failed to uncover

[17] The *Donovan* court did cite one § 1681s-2(b) case: *Gorman v. Wolpoff & Abramson, LLP*, 435 F. Supp. 2d 1004 (N.D. Cal. 2006). In *Gorman*, the court concluded that a creditor's failure personally to contact a consumer did not render the creditor's investigation unreasonable, adding that "it is also unclear what further information [the consumer] could have provided [the creditor] beyond the information in his letter to [the creditor]." *Id*. at 1009. Although this brief remark is consistent with the holding in *Donovan*, it does not directly support as broad a rule as that set forth in *Donovan*.

additional facts . . . it follows that any reasonable investigation required by [the FCRA] would have had a similar result.”).[18]

The First Circuit last year adopted this rule for § 1681i(a) plaintiffs in *DeAndrade v. Trans Union LLC,* 523 F.3d at 67. Acknowledging that a requirement for affirmatively demonstrating inaccuracy was not apparent “on the face of the statute,” the First Circuit noted that the weight of authority in other circuits supported the rule and emphasized that the FCRA is “intended to protect consumers against the compilation and dissemination of *inaccurate* credit information.” *Id*. (emphasis in original) (citing, *inter alia*, S.Rep. No. 108-166, 108th Cong., 1st Sess. 5-6 (2003)). The court concluded that without a showing of actual inaccuracy, a plaintiff’s § 1681i(a) claim will fail as a matter of law. *Id.* at 67-68. The decisive inquiry, the court held, was “whether the defendant credit bureau could have uncovered the inaccuracy if it had reasonably reinvestigated the matter.” *Id.* at 68 (quotation and citation omitted).

[18] Although not cited by the court in *Donovan*, there is also a line of cases finding an inherent requirement for a plaintiff to show inaccuracy in claims arising under 15 U.S.C. § 1681e(b), a provision requiring credit reporting agencies to “follow reasonable procedures to assure maximum possible accuracy” in the preparation of a credit report. In *Cahlin*, for example, the court held that § 1681e(b) “implicitly requires that a consumer must present evidence tending to show that a credit reporting agency prepared a report containing ‘inaccurate’ information.” 936 F.2d 1151, 1156 (11th Cir. 1991). *See also Grant v. TRW, Inc.*, 789 F. Supp. 690, 692 (D. Md. 1992); *Middlebrooks v. Retail Credit Co.*, 416 F. Supp. 1013, 1015 (N.D. Ga. 1976).

I agree with Judge Hornby in *Donovan* that requiring a plaintiff to demonstrate the inaccuracy of disputed credit information is also inherent to claims arising under § 1681s-2(b). Given the similarities between § 1681i(a) and § 1681s-2(b), there is no sound reason to distinguish between the duty of a credit reporting agency to investigate consumer disputes under § 1681i(a), and the analogous duty of a furnisher of credit information under § 1681s-2(b). *Cf. Johnson v. MBNA America Bank, NA*, 357 F.3d 426, 431 (4th Cir. 2004) (Wilkins, C.J.) (describing the reinvestigation requirements of § 1681s-2(b) and § 1681i(a) as analogous). Under either provision, the purpose of the FCRA, as the First Circuit emphasized in *DeAndrade*, is to protect consumers from the dissemination of inaccurate information.

The court in *Donovan* further addressed the question of whether a plaintiff's own contentions were sufficient to establish a material issue of fact as to the accuracy of the disputed credit information. 574 F. Supp. 2d at 208. To resolve this issue, Judge Hornby looked to another provision of the FCRA, § 1681s-2(a)(1), which sets forth the standard of accuracy that furnishers must satisfy when providing information to credit reporting agencies. This duty arises only if a furnisher has "specific knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the [credit] information.” 15 U.S.C. § 1681s-2(a)(1)(D). Although violations of this duty under § 1681s-2(a) cannot themselves give rise to a private cause of action, this provision is instructive in the context of § 1681s-2(b) because it indicates what type of evidence requires a furnisher to notify a credit reporting agency of an inaccuracy it has discovered. A consumer’s own allegations of an inaccuracy, absent any corroborating evidence, are not a sufficient basis for a furnisher to determine that an accuracy actually exists. Because the plaintiff in *Donovan* was unable to identify any evidence the furnisher *could have* discovered through a reasonable investigation, other than the consumer’s own allegations, the court held that the plaintiff’s FCRA claim failed as a matter of law. *See* 574 F. Supp. 2d at 208-09.

I find the reasoning of the *Donovan* court persuasive, and I will therefore apply the same analysis to Verizon NE’s investigation of Chiang’s disputes. The only evidence in the record that Verizon NE in fact overcharged Chiang for his telephone service is from Chiang’s own personal allegations, in the form of deposition testimony, affidavits, and demand letters. Although Chiang insists that Verizon NE was aware of the alleged inaccuracies in his account, he is unable to identify any basis for how Verizon NE would have had such knowledge, other than Chiang’s own telephone calls and letters complaining of the charges. As the court observed in *Donovan*, a furnisher is not required under the FCRA to rely solely on a consumer's allegations in the absence of other information that would cause a reasonable person to have substantial doubts about the accuracy of the consumer's credit report. As Chiang cannot demonstrate that a reasonable investigation *could have* uncovered any such evidence, I find that he has failed to raise a genuine issue of material fact as to whether Verizon NE's investigation satisfied § 1681s-2(b), and I will therefore grant summary judgment with respect to the FCRA claim.

C. Sanctions

Both parties in this case have also asked for sanctions against the opposing party. Chiang argues that the failure of Verizon NE to produce any of its communications with debt collectors or credit reporting agencies calls for a remedy under the doctrine of spoilation. This doctrine provides that negative inferences should be drawn against a party responsible for losing or destroying evidence. *See Allen Pen Co. v. Springfield Photo Mount Co.*, 653 F.2d 17, 23-34 (1st Cir. 1981). The First Circuit has held, however, that such a sanction is only appropriate where there is evidence that the party in question lost or destroyed the materials in "bad faith or . . . consciousness of a weak case." *Joler v. Scott Paper Co.*, 65 F.3d 160, 1995 WL 520723, *3 (1st Cir. 1995) (quoting *Allen Pen Co.*, 635 F.2d at 23). On the record before me, it is unclear if these communications were lost or destroyed, or if they were not produced for some other reason. In any event, I find that granting a negative inference against Verizon NE as to the content of these communications would not have any material effect on my disposition of the summary judgment motion.

Verizon NE, for its part, requests the opportunity to submit a motion for sanctions - in the form of costs and attorneys' fees - based on what it alleges were claims brought by Chiang in bad faith and actions by Chiang's counsel that "unreasonably and vexatiously" multiplied the proceedings. To support its claims of bad faith, Verizon NE cites two instances of allegedly contradictory testimony by Chiang: (1) deposition testimony suggesting that, contrary to an affidavit filed with Chiang's opposition to Verizon NE's motion to dismiss, Chiang did not ever believe "Verizon Massachusetts" was a third party debt collector; and (2) deposition testimony that Chiang had no other negative marks on his credit report, despite evidence that he has filed three other federal lawsuits to contest allegedly illegal reports of negative credit information. Although these examples may weigh against Chiang's credibility, I find that there is insufficient evidence of bad faith to warrant sanctions. I likewise find that sanctions are not warranted by the apparent uncooperative posture taken on several occasions by Chiang and his counsel with regard to the discovery and scheduling process.

V. CONCLUSION

For the reasons set forth more fully above, I GRANT defendant's summary judgment motion as to both the FDCPA claim and the FCRA claim.[19] I DENY the parties' respective motions for sanctions. Because this Memorandum and Order, together with the allowance of the motion to dismiss as to Count IV at the April 25, 2007 hearing effectively disposes of all plaintiff's claims in this action, the Clerk is directed to enter judgment for the defendant.

/s/ Douglas P. Woodlock
DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE

[19] I also GRANT summary judgment as to Chiang's separate claim for "Intentional Violation of Federal Statutes" (Count III) on grounds that it is duplicative of Chiang's FDCPA claim (Count II) and FCRA claim (Count I). Both the FDCPA and FCRA, by their own terms, take account of a defendant's level of intent. The FDCPA indicates that in determining a defendant's amount of liability, the court should consider, *inter alia*, "the extent to which . . . noncompliance was intentional." *See* 15 U.S.C. § 1692k(b). The FDCPA also provides that a defendant may avoid liability by showing by a preponderance of the evidence that any violation of the act was not intentional and resulted from a bona fide error. *See* 15 U.S.C. § 1692k(c). The FCRA has separate liability provisions for "willful noncompliance," 15 U.S.C. §§ 1681n, and "negligent noncompliance," 15 U.S.C. § 1681o, both of which were asserted by Chiang in connection with Count I.